

Appl. No. 10/025,071

Response dated October 12, 2004

Reply to Office Action of July 14, 2004

**Remarks**

Claims 1 – 25 are presented for Examiner Gray's consideration.

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the following remarks is respectfully requested.

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### Response to Rejections

By way of the Office Action mailed 07/14/2004, claims 1 – 21 and 23 – 25 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 5,683,531 to *Roessler et al.* (*Roessler '531*) in view of U.S. Publication Number 2003/0226634A1 to *Gardner, Jr.* (*Gardner*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. M.P.E.P. §2142, 2143.

The cited combination of art fails to teach or suggest all the claim limitations and therefore the rejection under §103 is improper. Applicants' claims 1 and 23 require, in part, a **retention-barrier composite web having absorbent material adhered to a liquid barrier sheet and cut to individual product lengths**. The Examiner acknowledges that "*Roessler et al.* do not teach using a liquid barrier sheet instead of tissue 70 under the retention composite web 58." (OA at page 2). As such, the Examiner looks to *Gardner*, and specifically to the absorbent material 36 adhered to liquid barrier 60, for the missing element, the retention-barrier composite. *Gardner* teaches that the backsheet assembly includes a nonwoven backsheet 18 and a liquid-impermeable poly film barrier 60. ([0037]: 3-6). The poly film mask or film barrier 60 is laminated or otherwise applied onto the backsheet material 18. ([0041]: 7-10). But, *Gardner* does not teach supplying a retention-barrier composite as required by Applicants' claims. In fact, there is no teaching or suggestion that the liquid barrier 60 and the absorbent material 36 are ever combined to form a composite. Furthermore, *Gardner* teaches the addition of the polymeric layer after the pad knife has cut the absorbent into a plurality of individual structures. ([0073]). This necessarily means that the liquid barrier sheet of *Gardner* is not cut to individual product lengths as required by Applicants' claims 1 and 23, but extends beyond the absorbent structure. The term "individual product length" as used in element (a) of claims 1 and 23 refers to the product length of individual retention barrier portions 57 as described at page 24, lines 20 and 21 and illustrated in Figure 3 at step 8 of Applicants' disclosure. In other words, individual product length means essentially the length of the absorbent structure. Therefore, element (a) of Applicants' claims 1 and 23 is clearly missing from

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the combination of *Roessler* '531 and *Gardner* and the combination fails to teach or suggest all the claim limitations.

It is improper to combine references where the references teach away from their combination. *In re Grasselli*, 713 F.2d 731, 743 (Fed. Cir. 1983). Additionally, there must be a reasonable expectation of success in the combination. The Examiner posits that "it would have been obvious...using a liquid barrier sheet instead of tissue 70 to provide added protection:..." (OA at page 3). However, one skilled in the art would NOT replace either the cover tissue 70 or the forming tissue 66 of *Roessler* '531 with the liquid barrier 60 of *Gardner* because doing so would render *Roessler* inoperative. Referring to Figure 1 of *Roessler* '531, the cover tissue 70 is positioned on the topsheet 76 side of the absorbent structure. If cover tissue 70 were replaced with a liquid barrier material, waste would be prevented from reaching the absorbent core and would frustrate the very purpose of disposable absorbent articles. Referring again to Figure 1 of *Roessler* '531, the forming tissue 66 wraps around the forming drum 64 and receives the fiberized wood pulp. Vacuum is drawn through the forming tissue 66 to aid in the formation of the absorbent core. If forming tissue 66 were replaced with a liquid barrier material, sufficient air would not pass, thus rendering the forming of the absorbent core inoperable. For these reasons, one skilled in the art would not replace either tissue of *Roessler* (66 or 70) with the liquid barrier material of *Gardner* because it would frustrate the purpose of *Roessler* and render the invention inoperable.

Claims 2 – 21 depend from claim 1 and are therefore novel and nonobvious over *Roessler* '531 and *Gardner* for at least the same reasons as claim 1 stated above. Claims 24 – 25 depend from claim 23 and are therefore novel and nonobvious over *Roessler* '531 and *Gardner* for at least the same reasons as claim 23 stated above. Thus, Applicants submit that claims 1 – 21 and 23 – 25 patentably distinguish over *Roessler* '531 and *Gardner* for at least the reasons discussed above. Consequently, Applicants request that the Examiner withdraw the rejection under 35 U.S.C. § 103(a).

By way of the Office Action mailed 07/14/2004, claim 22 stands rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 5,683,531 to *Roessler et al.* (*Roessler* '531) in view of U.S. Publication Number 2003/0226634A1 to *Gardner, Jr.* (*Gardner*) and further in view of U.S. Patent Number 5,405,342 to *Roessler et al.* (*Roessler* '342). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

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The cited combination of art (*Roessler '531*, *Roessler '342*, and *Gardner*) fails to teach or suggest all the claim limitations and therefore forms an improper rejection under §103. Applicants' claim 22 requires, among other things, creating a retention-barrier composite web on a first component line. The creation of the retention-barrier composite web involves, in part, laminating a retention web to a spacer layer/ barrier sheet composite. The cited combination does NOT teach nor suggest the creation of a spacer layer/ barrier sheet composite. Claim 22 further requires cutting leg openings in the retention-barrier composite web and cutting the retention-barrier composite web to individual garment lengths. Even assuming that a retention-barrier composite web was taught or suggested, the cited combination does not teach or suggest cutting leg openings in the retention-barrier composite web. Nor does the cited combination cut the retention-barrier composite web to individual garment lengths as discussed above. The individual garment length as used in Applicants' disclosure describes the length of the absorbent core as illustrated in Step 8 of Figure 3 and described on lines 20 – 21 on page 24. The addition of *Roessler '342* does not cure this previously discussed defect. Claim 22 is therefore novel and nonobvious over *Roessler '531*, *Gardner*, and *Roessler '342* for at least the reasons discussed above. Consequently, Applicants request that the Examiner withdraw the rejection under 35 U.S.C. § 103(a).


For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

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Respectfully submitted,

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